

E-002/CN-91-19 ORDER ACCEPTING STIPULATION, SUPPLEMENTING ORDER OF SEPTEMBER 9, 1994, AND DISMISSING PETITION FOR RECONSIDERATION AND SUBMISSION OF NEWLY DISCOVERED EVIDENCE AND REQUEST FOR A STAFF INVESTIGATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Marshall Johnson
Cynthia A. Kitlinski
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Application for a Certificate
of Need for Construction of an Independent
Spent Fuel Storage Installation

ISSUE DATE: February 8, 1995

DOCKET NO. E-002/CN-91-19

ORDER ACCEPTING STIPULATION,
SUPPLEMENTING ORDER OF
SEPTEMBER 9, 1994, AND DISMISSING
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PROCEDURAL HISTORY

On August 10, 1992 the Commission issued its ORDER GRANTING LIMITED CERTIFICATE OF NEED in this case. The Order authorized Northern States Power Company (NSP or the Company) to build an earth-sheltered dry cask nuclear waste storage facility at its Prairie Island nuclear power plant. The facility was authorized to store up to 17 casks containing spent fuel from the two Prairie Island reactors until the federal Department of Energy transports the fuel to a national nuclear waste storage facility.

The August 10 Order placed conditions on the certificate of need, including Company compliance with its representation that radiation exposure from the facility to the person living nearest the plant would at no point exceed .054 millirem per year. Order, at 32 and 34. The Order also required the Company to prepare a plan for monitoring radiation from the facility after consulting with the Minnesota Department of Health and the Prairie Island Indian Community. On October 9, 1992 the Company filed its proposed plan.

The Indian Community and the Department of Health filed comments supporting the plan in part and urging specific changes to it. On February 26, 1993 the Commission issued an Order approving most of the plan and requiring further filings. The parties made the additional filings in March and April, 1993.

The Commission then deferred action on the plan due to a Court of Appeals decision finding legislative approval necessary for construction of the facility. Legislative approval was granted during the 1993 legislative session. The Commission then resumed consideration of the plan, issuing an Order on September 9, 1994 resolving all monitoring issues.

On September 30 the Company requested reconsideration of the September 9 Order. On October 11 the Company filed a Submission of Newly Discovered Evidence and Request for a Staff Investigation.

On October 20, 1994 the Commission granted the Company's petition for reconsideration for the

purpose of allowing it careful review.¹ The Commission delayed scheduling a hearing on the merits at the request of the parties, who reported they were engaged in settlement negotiations.

On December 22, 1994 the parties filed a Stipulation Agreement, copy attached, asking the Commission to supplement the September 9, 1994 Order as follows:

1. Incorporate the ordering paragraphs of the September 9 Order into the final Order;
2. Accept the parties' agreement that they will not assert that the Company's failure to appeal the September 9, 1994 Order waived any federal preemption claim it might raise in future proceedings in this or any other docket;
3. Approve the parties' agreement to use the Monitoring Protocol attached to the stipulation;²
4. Dismiss the Company's Petition for Reconsideration and its Submission of Newly Discovered Evidence and Request for a Staff Investigation.

The Stipulation Agreement came before the Commission on January 26, 1995.

FINDINGS AND CONCLUSIONS

The Commission has examined the Stipulation Agreement and finds that it completes the process of developing a workable radiation monitoring plan compatible with the needs of all parties and the general public. The Commission will accept the stipulation and supplement the September 9 Order as the parties request. The original provisions of the September 9 Order remain and are supplemented as set forth below.

¹ Under Minn. Stat. § 216B.27, subd. 4, any petition for reconsideration not granted within 20 days of filing is deemed denied. The Commission found that adequate review of the Company's petition would require more than 20 days, and therefore granted it for purposes of ensuring careful review.

² Among other things, the protocol establishes the radiation thresholds that would trigger Department of Health action, sets twelve hour intervals for instrument readings, details procedures for investigating aberrant readings, and establishes a framework for sharing information with members of the Indian Community and the general public.

ORDER

1. The Company shall install two pressurized ion chambers with telemetry links to the offices of the Minnesota Department of Health as part of its nuclear radiation monitoring program.
2. The Company shall reimburse the Minnesota Department of Health for its participation in the nuclear radiation monitoring program, with such reimbursement not to exceed \$35,000 per year.
3. The parties' filings on public information and communications issues are accepted and approved.
4. The Commission accepts the parties' agreement that they will not assert that the Company waived any federal preemption claim it may raise in future proceedings in this or any other docket by failing to appeal the September 9, 1994 Order.
5. The Commission approves the parties' agreement to use the Monitoring Protocol attached to the Stipulation Agreement.
6. The Company's Petition for Reconsideration and Submission of Newly Discovered Evidence and Request for a Staff Investigation are dismissed.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)